

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 95 of 1997

in

SPECIAL CIVIL APPLICATION NO.1786 OF 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HARSHADBHAI B PATEL

Appearance:

MR KG SHETH for Appellants
MR HR PRAJAPATI for Respondent No. 1
MR YN OZA for Respondent No. 2, 3, 4, 5, 6

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

Date of decision: 02/11/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. This appeal, which is filed under Clause 15 of

the Letters Patent, is directed against judgment dated July 12, 1996, rendered by the learned Single Judge in Special Civil Application No.1786 of 1984, by which order dated March 6, 1984 passed by the State of Gujarat under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976, remanding the matter to the Additional Collector and Competent Authority, Urban Land Ceiling, Ahmedabad for deciding the matter afresh according to law, is set aside.

#. The respondents were the owners of land bearing survey Nos.613, 614, 615 and 616 situated at Isanpur, within the limits of Ahmedabad city. The total measurement of the lands owned by the respondents was 12548 sq. metres. The respondents applied for and were granted permission under Section 21(1) of the said Act. That order was taken into suo motu revision by the Government in exercise of powers conferred by Section 34 of the said Act. After hearing the respondents, the State Government, by order dated March 6, 1984, set aside the order by which permission was granted to the respondents under Section 21(1) of the Act and remanded the matter to the Additional Collector and Competent Authority, Urban Land Ceiling, Ahmedabad for deciding the matter afresh according to law. That order was challenged by the respondents in Special Civil Application No.1786 of 1984. The petition was admitted and the Court had not prevented the respondents from going on ahead with the construction work. What was observed by the Court was that the construction work to be done would at the risk and consequence of the respondents. It was noticed by the learned Single Judge who heard the petition that the respondents had constructed about 200 dwelling units and had handed over those dwelling units to a co-operative housing society functioning in the name and style of Siddhida Co-operative Housing Society, which was brought into existence by the allottees of such dwelling units. It was also noticed that about 120 families had started residing in the aforesaid housing society. In the opinion of the learned Single Judge, the petition had become a fait accompli. Therefore, the learned Single Judge, by the impugned judgment, quashed and set aside order passed by the Government under Section 34 of the said Act by which the matter was remanded to the Additional Collector and Competent Authority, Urban Land Ceiling, Ahmedabad, for deciding the matter afresh according to law. The judgment delivered by the learned Single Judge is subject matter of challenge in the present Letters Patent Appeal.

#. The appellants had filed Civil Application No.1474 of 1997 seeking stay of the judgment dated July 12, 1996, passed by the learned Single Judge in Special Civil Application No.1786 of 1984 during the pendency and final hearing of the appeal. However, the Division Bench had granted following relief by an order dated March 12, 1998:-

"So far as the law laid down by the learned Single Judge in the impugned judgment dated July 12, 1996 in Special Civil Application No.1786 of 1984 is concerned, it is hereby stayed. Rule is made absolute to the above extent with no orders as to costs."

#. It may be mentioned that the Parliament has enacted the Urban Land (Ceiling and Regulation) repealing Act, 1999, by which Urban Land (Ceiling and Regulation) Act, 1976 is repealed. Section 4 of the repealing Act provides that all proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act before any Court, Tribunal or other authority shall abate. The proviso to the said Section specifies that Section 4 shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the Competent Authority. The record of the case does not indicate that, after remand of the matter to the Additional Collector and Competent Authority, Urban Land Ceiling, Ahmedabad, possession of the lands in question was taken over by the State Government. As observed by the learned Single Judge, the respondents were not prevented from going ahead with the construction work and 200 dwelling units were not only constructed, but were handed over to a co-operative housing society, which was formed by allottees of dwelling units. The observation made by the learned Single Judge in the impugned judgment that about 120 families had started residing in the aforesaid housing society is not disputed by the appellants before this Court. Under the circumstances, it will have to be held that the Letters Patent Appeal has abated. As the Letters Patent Appeal has abated, the same deserves to be disposed of accordingly.

#. For the foregoing reasons, it is held that the Letters Patent Appeal No.95 of 1997 has abated. We make it clear that we have not pronounced upon legality or

otherwise of the order which is subject matter of
challenge in the appeal. The Letters Patent Appeal is
dismissed as having abated with no orders as to costs.

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